

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, this Board Member makes the following findings of fact and conclusions of law:

This Board Member finds that the ALJ's Order sets out findings of fact and conclusions of law that are detailed, accurate, and supported by the record. This Board Member further finds that it is not necessary to repeat those findings and conclusions in this order. Therefore, this Board Member adopts the ALJ's findings and conclusions as if specifically set forth herein.

Briefly stated, Christi Linthicum worked as a customer service representative for respondent. Her job duties included taking and making phone calls as well as researching claims on a computer and then reprocessing them. She testified that she had been having problems with her legs going numb and her feet were turning purple since she had received a new ergonomic chair in June 2007. Linthicum testified she tried unsuccessfully to find another old chair similar to the one she had. On July 1, 2007, her hourly wage was reduced because of an unfavorable review. Then the second or third week of July 2007 she began having pain in her back. Her last day worked was July 23, 2007, due to back pain. She sought medical treatment with her family physician, Dr. Simmons, on July 24, 2007. The doctor prescribed medication and took claimant off work.

Linthicum argues that her awkward sitting position led to her onset of back pain which was ultimately determined to be caused by a herniated disk at L5-S1. The ALJ analyzed the facts and the medical evidence and concluded Linthicum failed to prove she suffered personal injury arising out of and in the course of her employment. The ALJ noted in pertinent part:

Medical records from the claimant's treating physicians restated her history of the injury, that her back pain started with the change of office chairs. None of the treating physicians commented in the form of an opinion on whether the claimant's L5-S1 herniated disk was related to sitting in the chair. The respondent and insurance carrier had the claimant examined by Dr. Woodward, who wrote that "prolonged daily sitting in a chair has not been indicated as a causative factor in lumbar spondylolysis/degenerative disk disease."¹

And although a note from Linthicum's personal physician indicated that prolonged sitting in a "poor chair" may exacerbate her sciatica, no physician stated that it was more probably true than not that her sitting in the chair at work aggravated or intensified her condition.

Based upon the record compiled to date, this Board Member affirms the finding that Linthicum failed to meet her burden of proof that she suffered accidental injury arising out of and in the course of her employment.

¹ ALJ Order (Jan. 30, 2008) at 2.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.² Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2007 Supp. 44-551(i)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.³

WHEREFORE, it is the finding of this Board Member that the Order of Administrative Law Judge Kenneth J. Hursh dated January 30, 2008, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of May 2008.

HONORABLE DAVID A. SHUFELT
BOARD MEMBER

c: Angela Trimble, Attorney for Claimant
Matthew J. Schaefer, Attorney for Respondent and its Insurance Carrier
Kenneth J. Hursh, Administrative Law Judge

² K.S.A. 44-534a.

³ K.S.A. 2007 Supp. 44-555c(k).